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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/490,867	01/24/2000	Sam E. Kinney JR.	ARIBP050	7744
21912 7590 05/27/2009 VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014			EXAMINER LEMIEUX, JESSICA	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 05/27/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/490,867	<b>Applicant(s)</b> KINNEY, SAM E.	
	<b>Examiner</b> JESSICA L. LEMIEUX	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Final Office action is in response to the application filed on January 24<sup>th</sup>, 2000 and in response to the applicant's arguments/amendments filed on February 12<sup>th</sup>, 2009. Claims 1-10 and 16-20 are pending.
2. The previous Examiner Jocelyn Greimel is no longer continuing prosecution on application number 09/490867. It has been transferred to Examiner Jessica Lemieux.

### ***Response to Arguments***

3. Applicant states that the prior art "does not disclose transforming, using a characteristic associated with a quality of an auction item, said selected price value into a first bidder comparative bid parameter value that is used to create a second view of the Dutch auction" and "creating a first, second, and third view of the Dutch auction, wherein the second view and third view are different." Examiner notes that these arguments are made with respect to the amended claims. Examiner disagrees with the applicant's conclusion that the pending claims as amended are in condition for allowance, as the amended claims have been considered but are moot in view of the new ground(s) of rejection.
4. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. (WO 98/38844, hereinafter Johnson) in view of Carlton-Foss (US Patent No. 6,647,373, hereinafter Carlton-Foss).

As per claims 1, 6 and 16

Johnson discloses a method, system and apparatus for a Dutch auction between a plurality of potential bidders, comprising:

a. generating a sequence of price values for a comparative bid parameter that is used by an originator of the auction, said sequence of price values being used to create a first view of the Dutch auction for the originator of the auction (page 16+);

b. selecting a price value in said sequence of price values; for at least a first potential bidder, transforming, using a characteristic of an auction item, said selected price value into a first bidder comparative bid parameter value that is used to create a second view of the Dutch auction for said first potential bidder (page 16; page 28; page 31; figures 3-4);

c. for at least a second potential bidder, transforming, said selected price value into a second bidder comparative bid parameter value that is used to create a third view of the Dutch auction for said potential bidder, wherein the second view and third view are different (page 16; page 28; page 31; figures 3-4).

Johnson discloses the above method, which transforms price values using a characteristic of the item.

Johnson does not specifically teach the above method, system and apparatus for a Dutch auction between a plurality of potential bidders to include wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type.

However, Carlton-Foss discloses wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type (background; para 8-14 and 29).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the auction method of Johnson to include

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transforming price values using characteristics of an item, including quality as a characteristic as it would give the user more options making the system more user-friendly and efficient.

Examiner further notes that the combination of Johnson and Carlton-Foss teaches transforming, using a characteristic associated with a quality of an auction item, said selected price value into a first bidder comparative bid parameter value that is used to create a second view of the Dutch auction. As per the argument above, Examiner notes that neither Johnson or Carlton-Foss alone teach the combination, however since Johnson clearly teaches transforming, using a characteristic of an auction item, said selected price value into a first bidder comparative bid parameter value that is used to create a second view of the Dutch auction and Carlton-Foss teaches that the characteristic of the auction item of the first type is associated with the quality of the auction item, it would have been obvious to combine Johnson and Carlton-Foss to give the user more options making the system more user-friendly and efficient.

Examiner notes that the combination of Johnson and Carlton-Foss teaches performing the two transformations and creating a first, second, and third view of the Dutch auction. Examiner further notes that with respect to the amended claims that the combination of Johnson and Carlton-Foss further teach wherein the second view and third view are different (page 16; page 28; page 31; figures 3-4). Examiner notes that the views would inherently be different since the second view is created using price values of the first potential bidder and the third view is created using price values of the second potential bidder. Further, Johnson teaches "determining which bids apply to which control computer" and "transmits rate information and/or provider selection data to each relevant control computer" (figures 3-4). Therefore it would have been obvious to one skilled in the art at the time of invention that the combination of Johnson and Carlton-Foss teaches performing the two transformations and creating a first, second, and third view of the Dutch auction, wherein the second view and third view are different.

As per claims 2-5, 7-10 and 17-20

Johnson and Carlton-Foss discloses a method, system and apparatus for a Dutch auction between a plurality of potential bidders (as detailed above), additionally comprising:

- a. wherein generating a sequence of price values comprises predefining a series of price increments or decrements (page 15-16);
- b. wherein generating a sequence of price values further comprises changing said predefined series of price increments or decrements in real-time during the Dutch auction (at least page 15);
- c. wherein transforming, comprises performing one of a linear transformation, non-linear transformation, and lookup table transformations simultaneously (page 16+);
- d. wherein transforming comprises performing a combination of linear, non-linear, and lookup table transformations simultaneously (page 16+).

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Johnson discloses the above method (please see evaluation if independent claims 1,6 and 16 above), which transforms price values using a characteristic of the item.

Johnson does not disclose the above method, system and apparatus for a Dutch auction between a plurality of potential bidders to include wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type.

However, Carlton-Foss discloses wherein the characteristic of the auction item of the first type is associated with the quality of the item of the first type (background; paragraph 8-14 and 29).

It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have modified the auction method of Johnson to include transforming a price values using characteristics of an item, including quality as a characteristic as it would give the user more options making the system more user friendly and efficient.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA L. LEMIEUX whose telephone number is (571)270-3445. The examiner can normally be reached on Monday-Thursday 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jessica L Lemieux  
Examiner  
Art Unit 3693

/J. L. L./  
Examiner, Art Unit 3693  
May 2009

/Stefanos Karmis/  
Primary Examiner, Art Unit 3693